

2009 DRAFTING REQUEST

Bill

Received: **09/08/2008**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Jauch (608) 266-3510**

By/Representing: **Carrie Kahn**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Jauch@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Mercury-added products and services

Instructions:

Redraft SSA 1 to 2007 SB 346 as bill

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 09/09/2008 mglass 09/09/2008 csundber 09/25/2008	nmatzke 10/13/2008		_____			State
/1	csundber 01/08/2009 pgrant	nmatzke 01/16/2009	rschluet 10/13/2008	_____	cduerst 10/13/2008		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/12/2009						
	tkuczens						
	01/15/2009						
/2	csundber	nnatzke	mduchek		cduerst		S&L
	04/15/2009	04/15/2009	01/16/2009		01/16/2009		
/3	csundber		mduchek		cduerst	mbarman	S&L
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/4	btradewe	nnatzke	rschluet		lparisi	lparisi	
	04/27/2009	04/27/2009	04/27/2009		04/27/2009	04/27/2009	

FE Sent For:

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5/14/09

<END>

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9 10
2007 - 2008 LEGISLATURE

-0178/1
LRB:0252/H
CTS:kfj/f

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 346**

2009 BILL ✓

February 8, 2008 - Offered by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES.

- 1 AN ACT *to create* 100.275 of the statutes; **relating to:** products containing
2 mercury and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 100.275 of the statutes is created to read:

4 **100.275 Products containing mercury.** (1) DEFINITIONS. In this section:

5 (a) "Mercury-added product" means a product to which mercury is
6 intentionally added during formulation or manufacture, or a product containing one
7 or more components to which mercury is intentionally added during formulation or
8 manufacture.

9 (b) "Mercury relay" means a mercury-added product or device that opens or
10 closes electrical contacts to effect the operation of other devices in the same or
11 another electrical circuit. "Mercury relay" includes mercury displacement relays,
12 mercury wetted reed relays, and mercury contact relays.

(A)
INS FROM P. 2 LN 24 e 25

① (c) "Mercury switch" means a mercury-added product or device that opens or
2 closes an electrical circuit or gas valve. "Mercury switch" includes mercury float
3 switches actuated by rising or falling liquid levels, mercury tilt switches actuated by
4 a change in the switch position, mercury pressure switches actuated by a change in
5 pressure, mercury temperature switches actuated by a change in temperature, and
6 mercury flame sensors. "Mercury switch" does not include a mercury-added
7 thermostat.

8 (2) RESTRICTIONS ON SALE AND USE OF MERCURY. (a) *Fever thermometers.* No
9 person may sell or supply a mercury fever thermometer to a consumer or patient,
10 unless the thermometer has been prescribed for the consumer or patient by a
11 practitioner, as defined in s. 450.01 (17). A mercury fever thermometer
12 manufacturer shall supply with each thermometer clear instructions on the careful
13 handling of the thermometer to avoid breakage and on proper cleanup if the
14 thermometer breaks. For purposes of this subsection, "mercury fever thermometer"
15 means a thermometer that contains mercury for the purpose of measuring body
16 temperature, but does not include a thermometer containing mercury solely within
17 a button cell battery.

18 (b) *Manometers.* No person may sell or distribute a mercury-containing
19 manometer of the type in milking machines on dairy farms. Manufacturers of such
20 mercury-containing manometers shall notify wholesalers and retailers that the sale
21 or distribution of such manometers is prohibited and shall instruct them on the
22 proper disposal of remaining inventory.

23 (c) *Mercury-added thermostats.* No person may sell or distribute for
24 promotional purposes a mercury-added thermostat. For the purpose of this

25 subsection, "mercury-added thermostat" means a product or device that uses a

FF(b)
INSERT A
(move to p. 1 n. 8)

mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Mercury-added thermostat" includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(d) *Instruments and measuring devices.* 1. No person may sell or distribute any of the following items, if the item contains mercury:

- a. A barometer.
- b. An esophageal dilator, bougie tube, or gastrointestinal tube.
- c. A flow meter.
- d. A hydrometer.
- e. A hygrometer or psychrometer.
- f. A manometer other than a manometer prohibited from sale under par. (b).
- g. A pyrometer.
- h. A sphygmomanometer.
- i. A thermometer other than a thermometer prohibited from sale under par. (a).

2. Subdivision 1. does not apply to the sale of a mercury-added product listed in subd. 1. a. to i. if use of the product is required under federal law or if the only mercury-added component in the product is a button cell battery.

(e) *Mercury switches and relays.* 1. No person may sell or distribute, individually or as a product component, a mercury switch or mercury relay. This subdivision does not apply to a switch or relay that is used to replace a switch or relay that is a component in a larger product in use prior to the effective date of this subdivision [revisor inserts date], if one of the following applies:

- a. The larger product is used in manufacturing.

④

The prohibitions under

① b. The switch or relay is integrated with, and not physically separate from,
2 other components of the larger product.

3 2. Subdivision 1 does not apply to the sale of a mercury switch or mercury relay
4 if use of the switch or relay is a federal requirement.

⑤ (3) EXEMPTIONS. (a) This section does not apply to the sale of a mercury-added
6 product for which the secretary grants an exemption under this subsection.

7 (b) A manufacturer or user of a product may apply for an exemption from this
8 section by filing a written petition with the secretary. The secretary may grant an
9 exemption with or without conditions if, after consulting with the department of
10 natural resources, the secretary finds that the mercury-added product is reasonable
11 and appropriate for a specific use. The secretary shall find that a product is
12 reasonable and appropriate for a specific use only if a petitioner establishes all of the
13 following:

manufacturer or user

14 1. A system exists for the proper collection, transportation, and processing of
15 the product at the end of its life.

16 2. One of the following applies:

17 a. Use of the product provides a net benefit to the environment, public health,
18 or public safety when compared to available nonmercury alternatives.

19 b. Technically feasible nonmercury alternatives are not available at
20 comparable cost.

21 (c) Prior to approving an exemption, the secretary may consult with
22 neighboring states to promote consistency in the regulation of mercury-added
23 products. The secretary may request a person who is granted an exemption to
24 maintain records and provide reasonable reports to the department that
25 characterize mercury use. Exemptions may not exceed 5 years and may be renewed

in the products for which the exemption was granted

1 upon written application if the secretary finds that the mercury-added product
2 continues to meet the criteria specified in par. (b) and the manufacturer or other
3 persons comply with the conditions of its original approval. The department, after
4 consulting with the department of natural resources, shall promulgate rules for
5 processing exemption applications that provide public participation, taking into
6 account the role of the interstate clearinghouse. For

7 (4) INTERSTATE CLEARINGHOUSE The department may participate in the
8 establishment and implementation of a regional, multistate clearinghouse to assist
9 in carrying out the requirements of this section.

10 **SECTION 2. Effective date.**

11 (1) This act takes effect on the first day of the 12th month beginning after
12 publication.

13 (END)

under sub. (4)

of agriculture, trade
and consumer protection

D-note
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2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0178/lins
CTS:.....

1

Insert A:

anal: line →

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture, including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, and switches and relays.

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and disposal. The bill prohibits the sale of manometers of the type in milking machines. Under the bill, manufacturers of such manometers must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The bill also prohibits the sale of certain thermostats and other instruments and switches containing mercury.

The bill authorizes a manufacturer or user of certain mercury-added products to petition for an exemption from the bill's prohibitions. The secretary may, in consultation with the Department of Natural Resources, grant such an exemption only if the petitioner establishes certain facts, including that technically feasible mercury-free alternatives are not available at comparable cost.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

anal: line →

nonmercury

that contain mercury

(mercury-added products)

clean up if the thermometer breaks

that contain mercury and that are the type in milking machines

and consumer protection

of agriculture, trade

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-0178/1dn

CTS:.....

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Senator Jauch:

Please review this draft carefully to ensure it is consistent with your intent. ✓

Should proposed s. 100.275 (2) (a) ✓ require a mercury fever thermometer manufacturer to include with each thermometer information regarding the proper disposal of an unbroken thermometer?

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0178/1dn
CTS:nwn&jld:rs

October 13, 2008

Senator Jauch:

Please review this draft carefully to ensure it is consistent with your intent.

Should proposed s. 100.275 (2) (a) require a mercury fever thermometer manufacturer to include with each thermometer information regarding the proper disposal of an unbroken thermometer?

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

Sundberg, Christopher

From: Kahn, Carrie
Sent: Thursday, January 08, 2009 4:18 PM
To: Sundberg, Christopher
Subject: Mercury products phase-out additions

Attachments: SB346 Reopelle.doc



SB346
Reopelle.doc (80 KB)

Carrie Kahn
Legislative Assistant
State Senator Bob Jauch
P.O. Box 7882
Madison, WI 53707-7882

608-266-3510
1-800-469-6562

Additions to SB-346

We think that two additional mercury product concepts could be introduced as amendments to SB-346 that would not be particularly controversial because similar legislation has already been passed by the neighboring states of Minnesota, Illinois, and Michigan, and because these prohibitions are already pretty common. We have suggested some legislation text:

X (a) A ban on the sale of household mercury products:

"Household Mercury Products. No person may sell or distribute a toy, game, or jewelry that contains mercury; an item of clothing, shoes, or other wearing apparel that contains a mercury switch; an over-the-counter pharmaceutical product for human use that contains mercury; or a cosmetic, toiletry, or fragrance product that contains mercury."

X (b) A ban on the purchase or use of mercury-containing products in schools:

"Mercury Use in Schools. No primary or secondary school shall purchase or use elemental mercury, mercury compounds, or measurement instruments that contain mercury, including thermometers, barometers, sphygmomanometers, or manometers. After two years no primary or secondary school may store elemental mercury, mercury compounds, or a measurement instrument that contains mercury."

Finally, it may be desirable for the Governor of Wisconsin to issue a procurement order ordering state departments to eliminate the purchase of mercury-containing products. This would be an executive order rather than legislation. Such procurement orders have been issued by a few other state governors:

"Order of the Governor. Departments of State Government shall eliminate the purchase of mercury-containing products if mercury-free alternative products serving the same purpose are available at equivalent cost, and each Department shall revise its purchasing policies and procedures consistent with this order."

cc. Mark McDermid – CEA
Sue Bangert - WMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-0178/1dn

TKK:

nwn

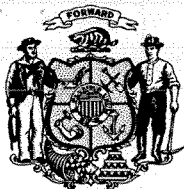
Senator Jauch:

This version of LRB-0178 requires the Department of Public Instruction (DPI) to ensure that no public schools purchase or use elemental mercury, mercury-containing compounds, mercury-containing instruments and measuring devices, or mercury fever thermometers. The bill also requires that, by July 1, 2012, no public schools store any of the same products. I have two questions for your consideration:

1. Do you want these same requirements to apply to any or all charter schools? Any or all private schools?

2. What should public schools be required to do with any elemental mercury or mercury-containing products that they may have on inventory at the time the prohibitions go into effect? Should DPI be required to work or consult with the Department of Agriculture, Trade and Consumer Protection regarding the proper disposal of these items?

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov



Wanted: by 1/19/09, if possible
State of Wisconsin
2009 - 2010 LEGISLATURE

2
LRB-0178/X
CTS:nwn&jld:rs

TKK inserts
d-note
stays

2009 BILL

in 1/15/09
Wanted by 1/19/09

- SA ✓
X-ref ✓
- 1 **AN ACT** ^{Regen.} *to create* 100.275 of the statutes; **relating to:** products containing
2 mercury and granting rule-making authority. *and disposal*

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture (mercury-added products), including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, and switches and relays. *and household items*

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and cleanup if the thermometer breaks. The bill prohibits the sale of manometers that contain mercury. Under the bill, manufacturers of manometers that contain mercury and that are the type in milking machines must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The bill also prohibits the sale of certain thermostats and other instruments and switches containing mercury. *products*

The bill authorizes a manufacturer or user of certain mercury-added products to petition for an exemption from the bill's prohibitions. The secretary of agriculture, trade and consumer protection may, in consultation with the Department of Natural Resources, grant such an exemption only if the petitioner establishes certain facts, including that technically feasible nonmercury alternatives are not available at comparable cost.

including thermostats, and other instruments and switches, and household items such as toys, clothing, and cosmetics ✓

INSERT ANAL TRK

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
SECTION 1. 100.275 of the statutes is created to read:

100.275 Products containing mercury. (1) DEFINITIONS. In this section:

(a) "Mercury-added product" means a product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture.

(b) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Mercury-added thermostat" includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(c) "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(d) "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve. "Mercury switch" includes mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and

BILL

1 mercury flame sensors. "Mercury switch" does not include a mercury-added
2 thermostat.

3 (2) RESTRICTIONS ON SALE AND USE OF MERCURY. (a) *Fever thermometers*. No
4 person may sell or supply a mercury fever thermometer to a consumer or patient,
5 unless the thermometer has been prescribed for the consumer or patient by a
6 practitioner, as defined in s. 450.01 (17). A mercury fever thermometer
7 manufacturer shall supply with each thermometer clear instructions on the careful
8 handling of the thermometer to avoid breakage and on proper cleanup if the
9 thermometer breaks. For purposes of this subsection, "mercury fever thermometer"
10 means a thermometer that contains mercury for the purpose of measuring body
11 temperature, but does not include a thermometer containing mercury solely within
12 a button cell battery. ✓

13 (b) *Manometers*. No person may sell or distribute a mercury-containing
14 manometer of the type in milking machines on dairy farms. Manufacturers of such
15 mercury-containing manometers shall notify wholesalers and retailers that the sale
16 or distribution of such manometers is prohibited and shall instruct them on the
17 proper disposal of remaining inventory.

18 (c) *Mercury-added thermostats*. No person may sell or distribute for
19 promotional purposes a mercury-added thermostat.

20 (d) *Instruments and measuring devices*. 1. No person may sell or distribute any
21 of the following items, if the item contains mercury:

22 a. A barometer.

23 b. An esophageal dilator, bougie tube, or gastrointestinal tube.

24 c. A flowmeter.

25 d. A hydrometer.

BILL

SECTION 1

1 e. A hygrometer or psychrometer.

2 f. A manometer other than a manometer prohibited from sale under par. (b).

3 g. A pyrometer.

4 h. A sphygmomanometer.

5 i. A thermometer other than a thermometer prohibited from sale under par. (a).

6 2. Subdivision 1. does not apply to the sale of a mercury-added product listed
7 in subd. 1. a. to i. if use of the product is required under federal law or if the only
8 mercury-added component in the product is a button cell battery.

9 (e) *Mercury switches and relays.* 1. No person may sell or distribute,
10 individually or as a product component, a mercury switch or mercury relay. This
11 subdivision does not apply to a switch or relay that is used to replace a switch or relay
12 that is a component in a larger product in use prior to the effective date of this
13 subdivision [LRB inserts date], if one of the following applies:

14 a. The larger product is used in manufacturing.

15 b. The switch or relay is integrated with, and not physically separate from,
16 other components of the larger product.

17 2. Subdivision 1. does not apply to the sale of a mercury switch or mercury relay
18 if use of the switch or relay is a federal requirement.

19 (3) EXEMPTIONS. (a) The prohibitions under this section do not apply to the sale
20 of a mercury-added product for which the secretary grants an exemption under this
21 subsection.

22 (b) A manufacturer or user of a product may apply for an exemption from this
23 section by filing a written petition with the secretary. The secretary may grant an
24 exemption with or without conditions if, after consulting with the department of
25 natural resources, the secretary finds that the mercury-added product is reasonable

BILL

1 and appropriate for a specific use. The secretary shall find that a product is
2 reasonable and appropriate for a specific use only if a manufacturer or user
3 establishes all of the following:

4 1. A system exists for the proper collection, transportation, and processing of
5 the product at the end of its life.

6 2. One of the following applies:

7 a. Use of the product provides a net benefit to the environment, public health,
8 or public safety when compared to available nonmercury alternatives.

9 b. Technically feasible nonmercury alternatives are not available at
10 comparable cost.

11 (c) Prior to approving an exemption, the secretary may consult with
12 neighboring states to promote consistency in the regulation of mercury-added
13 products. The secretary may request a person who is granted an exemption to
14 maintain records and provide reasonable reports to the department that
15 characterize mercury use in the products for which the exemption was granted.
16 Exemptions may not exceed 5 years and may be renewed upon written application
17 if the secretary finds that the mercury-added product continues to meet the criteria
18 specified in par. (b) and the manufacturer or other persons comply with the
19 conditions of its original approval. The department of agriculture, trade and
20 consumer protection, after consulting with the department of natural resources,
21 shall promulgate rules for processing an exemption application that provide for
22 public participation, taking into account the role of the interstate clearinghouse
23 under sub. (4).

BILL**SECTION 1**

1 (4) INTERSTATE CLEARINGHOUSE. The department may participate in the
2 establishment and implementation of a regional, multistate clearinghouse to assist
3 in carrying out the requirements of this section.

SECTION 2. Effective date.

4
5 (1) This act takes effect on the first day of the 12th month beginning after
6 publication.✓

7 (END)

D-note

2007 ASSEMBLY BILL 715

January 22, 2008 - Introduced by Representatives POPE-ROBERTS, BLACK, BERCEAU, GRIGSBY, HEBL, A. OTT, PARISI and POCAN, cosponsored by Senators MILLER, LASSA, RISSER, SCHULTZ and TAYLOR. Referred to Committee on Education.

- 1 AN ACT *to create* 118.07 (4) of the statutes; **relating to:** the purchase, storage,
2 or use of mercury by schools.

Analysis by the Legislative Reference Bureau

Beginning January 1, 2011, this bill prohibits a public, private, or charter school from purchasing, storing, or using free flowing elemental mercury for any purpose, or from purchasing, storing, or using an instrument containing mercury, *a mercury-containing compound or* unless no reasonably acceptable, mercury-free alternative exists. *or measuring device* In the latter case, only *in which* an instrument that contains the lowest mercury content available may be used.

For further information see the *a compound* **state and local** fiscal estimate, which will be printed as an appendix to this bill. *or measuring device*

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 118.07 (4) of the statutes is created to read:

118.07 (4) Beginning January 1, 2011, no school board, private school, or charter school may do any of the following:

(a) Purchase, store, or use free flowing elemental mercury for any purpose.

ASSEMBLY BILL 715

SECTION 1

- 1 (b) Purchase, store, or use a mercury-containing compound or an instrument or measuring device that contains mercury unless no
 2 reasonably acceptable, mercury-free alternative exists, in which case the school
 3 board, private school, or charter school shall use an instrument or measuring device containing the lowest
 4 mercury content available. ✓

one of the
following
exceptions
applies: ✓
¶ 1.0

(END)

- ¶ 2.0 The purchase or use of the instrument or measuring device is required under federal law. ✓
 ¶ 3.0 The only mercury-added component in the instrument or measuring device is a button cell battery. ✓

- ¶ (c) Beginning January 1, 2012, store free flowing elemental mercury or unless
 one of the exceptions under para (b) applies, store
 a mercury-containing compound or an instrument or measuring
 device that contains mercury. ✓

END
INVERT
6-4

INSERT to INSERT ANAL

LRB - 0178/lin

Beginning January 1, 2012, the bill prohibits a public, private, or free elemental charter school from storing free flowing elemental mercury or, with certain exceptions, from storing a mercury-containing compound or an instrument or measuring device containing mercury. ✓

¶ A public, private, or charter school may purchase, use, or store a mercury-containing compound ^{stat.} or an instrument ^{stat.} or measuring device ^{contains mercury} if one of the following exceptions ^{applies} apply. ✓

¶ 1. The purchase or use of the compound, instrument, or measuring device is required under federal law. ✓

¶ 2. The only mercury-added component in the instrument or measuring device is a button cell battery. ✓

¶ 3.

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0178/2ins

CTS:.....

Insert A:

Insert 4-18:

(f) ⁽¹⁾ Household items. No person may sell or distribute any of the following items

if the item contains mercury:

1. A toy or game.✓
2. Jewelry.✓
3. Clothing or shoes.✓
4. An over-the-counter✓ pharmaceutical product for human use.✓
5. A cosmetic, toiletry, or fragrance product.✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0178/2dn
TKK:nwn:md

January 16, 2009

Senator Jauch:

1. This version of LRB-0178 prohibits, with certain exceptions, a public, private, or charter school from purchasing or using elemental mercury, mercury-containing compounds, instruments, and measuring devices. The bill also requires that, by July 1, 2012, no public, private, or charter schools store any of the same products. Was that your intent?
2. What should the schools be required to do with any elemental mercury or mercury-containing products that they may have on inventory at the time the prohibitions go into effect? Should DPI be required to work or consult with the Department of Agriculture, Trade and Consumer Protection regarding the proper disposal of these items?

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

4/13/09 Carrie / Janice

Redraft LRB-0178/2:

P. 6 L. 22: insert "knowingly" after "may".



Wanted: today (4/15/2009)
State of Wisconsin
2009 - 2010 LEGISLATURE

3
LRB-0178/2
CTS&TKK:nwn&jld:md RMR

2009 BILL

Regen.

- 1 AN ACT *to create* 100.275 and 118.07 (4) of the statutes; **relating to:** products
2 containing mercury and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture (mercury-added products), including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, switches and relays, and household items.

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and disposal and cleanup if the thermometer breaks. The bill prohibits the sale of manometers that contain mercury. Under the bill, manufacturers of manometers that contain mercury and that are the type in milking machines must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The bill also prohibits the sale of certain products containing mercury, including thermostats, other instruments and switches, and household items such as toys, clothing, and cosmetics.

The bill authorizes a manufacturer or user of certain mercury-added products to petition for an exemption from the bill's prohibitions. The secretary of agriculture, trade and consumer protection may, in consultation with the Department of Natural Resources, grant such an exemption only if the petitioner establishes certain facts, including that technically feasible nonmercury alternatives are not available at comparable cost.

→ 7 This bill prohibits a public, private, or charter school from purchasing or using free-flowing elemental mercury for any purpose, or, with certain exceptions, from

knowingly

BILL knowingly

knowingly

→ purchasing or using a mercury-containing compound or an instrument or measuring device containing mercury. Beginning January 1, 2012, the bill prohibits a public, private, or charter school from storing free-flowing elemental mercury or, with certain exceptions, from storing a mercury-containing compound or an instrument or measuring device containing mercury.

→ A public, private, or charter school may purchase, use, or store a mercury-containing compound or an instrument or measuring device containing mercury if one of the following exceptions applies:

1. The purchase or use of the compound, instrument, or measuring device is required under federal law.

2. The only mercury-added component in the instrument or measuring device is a button cell battery.

3. No reasonably acceptable, mercury-free alternative exists, in which case, only a compound, instrument, or measuring device that contains the lowest mercury content available may be used.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.275 of the statutes is created to read:

2 **100.275 Products containing mercury. (1) DEFINITIONS.** In this section:

3 (a) "Mercury-added product" means a product to which mercury is
4 intentionally added during formulation or manufacture, or a product containing one
5 or more components to which mercury is intentionally added during formulation or
6 manufacture.

7 (b) "Mercury-added thermostat" means a product or device that uses a mercury
8 switch to sense and control room temperature through communication with heating,
9 ventilating, or air-conditioning equipment. "Mercury-added thermostat" includes
10 thermostats used to sense and control room temperature in residential, commercial,
11 industrial, and other buildings, but does not include a thermostat used to sense and
12 control temperature as part of a manufacturing process.

BILL

1 (c) "Mercury relay" means a mercury-added product or device that opens or
2 closes electrical contacts to effect the operation of other devices in the same or
3 another electrical circuit. "Mercury relay" includes mercury displacement relays,
4 mercury wetted reed relays, and mercury contact relays.

5 (d) "Mercury switch" means a mercury-added product or device that opens or
6 closes an electrical circuit or gas valve. "Mercury switch" includes mercury float
7 switches actuated by rising or falling liquid levels, mercury tilt switches actuated by
8 a change in the switch position, mercury pressure switches actuated by a change in
9 pressure, mercury temperature switches actuated by a change in temperature, and
10 mercury flame sensors. "Mercury switch" does not include a mercury-added
11 thermostat.

12 **(2) RESTRICTIONS ON SALE AND USE OF MERCURY.** (a) *Fever thermometers.* No
13 person may sell or supply a mercury fever thermometer to a consumer or patient,
14 unless the thermometer has been prescribed for the consumer or patient by a
15 practitioner, as defined in s. 450.01 (17). A mercury fever thermometer
16 manufacturer shall supply with each thermometer clear instructions on the careful
17 handling of the thermometer to avoid breakage, on proper cleanup if the
18 thermometer breaks, and on proper disposal. For purposes of this subsection,
19 "mercury fever thermometer" means a thermometer that contains mercury for the
20 purpose of measuring body temperature, but does not include a thermometer
21 containing mercury solely within a button cell battery.

22 (b) *Manometers.* No person may sell or distribute a mercury-containing
23 manometer of the type in milking machines on dairy farms. Manufacturers of such
24 mercury-containing manometers shall notify wholesalers and retailers that the sale

BILL**SECTION 1**

1 or distribution of such manometers is prohibited and shall instruct them on the
2 proper disposal of remaining inventory.

3 (c) *Mercury-added thermostats.* No person may sell or distribute for
4 promotional purposes a mercury-added thermostat.

5 (d) *Instruments and measuring devices.* 1. No person may sell or distribute any
6 of the following items, if the item contains mercury:

7 a. A barometer.

8 b. An esophageal dilator, bougie tube, or gastrointestinal tube.

9 c. A flowmeter.

10 d. A hydrometer.

11 e. A hygrometer or psychrometer.

12 f. A manometer other than a manometer prohibited from sale under par. (b).

13 g. A pyrometer.

14 h. A sphygmomanometer.

15 i. A thermometer other than a thermometer prohibited from sale under par. (a).

16 2. Subdivision 1. does not apply to the sale of a mercury-added product listed
17 in subd. 1. a. to i. if use of the product is required under federal law or if the only
18 mercury-added component in the product is a button cell battery.

19 (e) *Mercury switches and relays.* 1. No person may sell or distribute,
20 individually or as a product component, a mercury switch or mercury relay. This
21 subdivision does not apply to a switch or relay that is used to replace a switch or relay
22 that is a component in a larger product in use prior to the effective date of this
23 subdivision [LRB inserts date], if one of the following applies:

24 a. The larger product is used in manufacturing.

BILL

1 b. The switch or relay is integrated with, and not physically separate from,
2 other components of the larger product.

3 2. Subdivision 1. does not apply to the sale of a mercury switch or mercury relay
4 if use of the switch or relay is a federal requirement.

5 (f) *Household items*. No person may sell or distribute any of the following items
6 if the item contains mercury:

7 1. A toy or game.

8 2. Jewelry.

9 3. Clothing or shoes.

10 4. An over-the-counter pharmaceutical product for human use.

11 5. A cosmetic, toiletry, or fragrance product.

12 (3) EXEMPTIONS. (a) The prohibitions under this section do not apply to the sale
13 of a mercury-added product for which the secretary grants an exemption under this
14 subsection.

15 (b) A manufacturer or user of a product may apply for an exemption from this
16 section by filing a written petition with the secretary. The secretary may grant an
17 exemption with or without conditions if, after consulting with the department of
18 natural resources, the secretary finds that the mercury-added product is reasonable
19 and appropriate for a specific use. The secretary shall find that a product is
20 reasonable and appropriate for a specific use only if a manufacturer or user
21 establishes all of the following:

22 1. A system exists for the proper collection, transportation, and processing of
23 the product at the end of its life.

24 2. One of the following applies:

BILL**SECTION 1**

1 a. Use of the product provides a net benefit to the environment, public health,
2 or public safety when compared to available nonmercury alternatives.

3 b. Technically feasible nonmercury alternatives are not available at
4 comparable cost.

5 (c) Prior to approving an exemption, the secretary may consult with
6 neighboring states to promote consistency in the regulation of mercury-added
7 products. The secretary may request a person who is granted an exemption to
8 maintain records and provide reasonable reports to the department that
9 characterize mercury use in the products for which the exemption was granted.
10 Exemptions may not exceed 5 years and may be renewed upon written application
11 if the secretary finds that the mercury-added product continues to meet the criteria
12 specified in par. (b) and the manufacturer or other persons comply with the
13 conditions of its original approval. The department of agriculture, trade and
14 consumer protection, after consulting with the department of natural resources,
15 shall promulgate rules for processing an exemption application that provide for
16 public participation, taking into account the role of the interstate clearinghouse
17 under sub. (4).

18 (4) INTERSTATE CLEARINGHOUSE. The department may participate in the
19 establishment and implementation of a regional, multistate clearinghouse to assist
20 in carrying out the requirements of this section.

21 **SECTION 2.** 118.07 (4) of the statutes is created to read:

22 118.07 (4) No school board, private school, or charter school may do any of the
23 following:

24 (a) Purchase or use free-flowing elemental mercury for any purpose.

knowingly

BILL

1 (b) Purchase or use a mercury-containing compound or an instrument or
2 measuring device that contains mercury unless one of the following exceptions
3 applies:

4 1. No reasonably acceptable, mercury-free alternative exists, in which case the
5 school board, private school, or charter school shall use a compound, instrument, or
6 measuring device containing the lowest mercury content available.

7 2. The purchase or use of the compound, instrument, or measuring device is
8 required under federal law.

9 3. The only mercury-added component in the instrument or measuring device
10 is a button cell battery.

11 (c) Beginning January 1, 2012, store free-flowing elemental mercury or, unless
12 one of the exceptions under par. (b) applies, store a mercury-containing compound
13 or an instrument or measuring device that contains mercury.

SECTION 3. Effective date.

14 (1) This act takes effect on the first day of the 12th month beginning after
15 publication.
16

17 (END)

Parisi, Lori

From: Barry, Sarah
Sent: Thursday, April 16, 2009 12:32 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-0178/3 Topic: Mercury-added products and services

Please Jacket LRB 09-0178/3 for the SENATE.

4/21 Sarah Barry / Janeh

Redraft LRB-0178/3:

1. DNR, not DATCP, decides exemption requests.
2. Incorp DNR's technical suggestions in email from Randy Case.

Sundberg, Christopher

From: Case, Charles R - DNR [Charles.Case@wisconsin.gov]
Sent: Wednesday, April 22, 2009 9:21 AM
To: Sundberg, Christopher
Cc: Heinen, Paul H - DNR; Bangert, Suzanne A - DNR; McDermid, Mark - DNR; Amber Smith
Subject: FW: Mercury Products Bill/Comments 01/22/09
Attachments: 09-01782.pdf; 09-01782dn.pdf

Christopher, I have your e-mail from Sarah Barry of Sen. Jauch's office asking for the three technical edits to the Mercury Bill LRB-0178/3 that the DNR had earlier recommended. I have attached the January 22 e-mail from our Suzanne Bangert with the three edits listed under paragraph (1), e.g., 100.275(2)(c), 100.275(2)(f), and 118.07(4)(c). I think the edits are straight forward but I would be glad to discuss with you if you wish. I am in the office all of today. Thanks for considering but do not let these edits hold up the bill.

Randy Case DNR 608-267-7639

From: Bangert, Suzanne A - DNR
Sent: Thursday, January 22, 2009 8:17 PM
To: Kahn, Carrie - LEGIS
Cc: Amber Meyer Smith; Case, Charles R - DNR; McDermid, Mark - DNR; Heinen, Paul H - DNR; Bangert, Suzanne A - DNR
Subject: FW: Mercury products draft

Carrie:

Following are comments and answers to questions that have been raised on the proposed bill which we received yesterday. If you have any questions, please let Randy or me know.

(1) Jauch 2009 Bill, second draft (LRB-0178/2), comments ordered per bill language:

- ✓ 100.275(2)(c) *Mercury-added thermostats*. We did not notice this language earlier. The sentence could be read to prohibit the sale or distribution of only those mercury thermostats used for promotional purposes. We suggest that commas be added to make the sales ban on all mercury thermostats clear, i.e., "No person may sell, or distribute for promotional purposes, a mercury-added thermostat."
- ✓ 100.275(2)(f) *Household items*. This new section captures our added suggestion on banning the sale of household mercury products. Looking at other exceptions in the bill, we suggest that an exception could be added to this new section as follows: "Prohibitions on the sale or distribution of household items containing mercury does not apply if the only mercury-added component in the household item is a button cell battery." This may require a renumbering and lettering of this section to parallel other sections of the bill.

2
TKK
Section 2. 118.07(4). This new section captures our added suggestion on banning the use and storage of mercury products in schools. The three exceptions that have been added to the proposed language are improvements. Following up on the Drafter's Note (see below), a second sentence could be added to the end of 118.07(4)(c) ... "All eliminated mercury products shall be recycled in accordance with applicable state rules."

TKK
(2) Drafter's Note from the Legislative Reference Bureau, January 16, 2009:

1. Intent. Was the intent to ban the storage of mercury products after July 1, 2012? Yes, this section bans the purchase of mercury products by schools immediately, but allows a reasonable length of time (two years) for schools to rid themselves of mercury products previously purchased. Mercury spills in schools commonly occur from old liquid mercury, mercury compounds, or mercury equipment sitting under laboratory sinks or in storage rooms. These old mercury products need to be eliminated from schools as well as new mercury products no longer purchased.

04/22/2009

TKK 2. Disposal. Mercury products in inventory should be collected and recycled by the waste management contractor used by the school district. This would be the same company or service that handles burned-out fluorescent bulbs or other school waste materials. We suggest adding a sentence to Section 2. 118.07(4)(c) (see above) to make recycling of mercury products clear. A reference to DPI or DATCP is not necessary. The school district's waste management service will know how to recycle mercury ... recycling mercury products is both common and not very expensive. In fact, many or most Wisconsin school districts have collected and recycled their old mercury products already.

(3) DATCP vs. DNR Responsibilities for Handling Exceptions (100.275(3) and (4)):

The Jauch Bill basically bans the sale or distribution of mercury-containing products to consumers, whether individuals or businesses. Overseeing such a ban, with other bans on toys and shoes, is a trade and consumer protection responsibility, hence DATCP responsibility. The Jauch Bill says almost nothing about mercury product waste management, except perhaps for old school mercury product recycling. Mercury product waste management is a DNR responsibility but is not the thrust of the Jauch bill. We suggest that the responsibility remain with DATCP, consulting with DNR. We are willing to discuss this further if this becomes a significant issue.

(4) Amber Meyer Smith's Questions received today, 01/22:

Neighboring state elimination of school mercury products in stock. Yes, Michigan school storage elimination was by 2004. In fact it looks like the Bill Drafter for Senator Jauch's bill may have used some Michigan language in crafting the school portion of the his bill. Minnesota school storage elimination is by 2009. Illinois banned mercury product use in schools classrooms in 2005 but has not explicitly required the recycling of old mercury products.

Recycling according to current law. Simply require school mercury product recycling under "applicable state rules" (see above) and not referencing DPI or DATCP.

Wisconsin Association of School Boards. It is our understanding that there is no longer a lot of mercury-containing products in Wisconsin schools, much has already been eliminated. If indeed a fair amount still exists in schools, that makes this legislation even more relevant. With regard to janitorial maintenance products containing intentionally added mercury during formulation or manufacture (which is the class of Mercury-added products addressed by this bill), a very minor amount of unintentional mercury contamination of some cleaning products may occur, but mercury is not an added ingredient.

If you have any questions on our comments, please don't hesitate to let Randy Case or me know.

Sue B.

Suzanne Bangert, Deputy Administrator
Division of Air & Waste Management
Wisc. Department of Natural Resources

Telephone: 608-266-0014

Fax: 608-267-2768

E-mail: suzanne.bangert@dnr.state.wi.us

From: Kahn, Carrie [<mailto:Carrie.Kahn@legis.wisconsin.gov>]

Sent: Wednesday, January 21, 2009 4:31 PM

To: Amber Smith; Heinen, Paul H - DNR; Case, Charles R - DNR; Bangert, Suzanne A - DNR

Subject: Mercury products draft

04/22/2009

Hi all,

This draft came to me on Friday, and I apologize it took me so long to get it to you!

Please also note the drafter's comments. In addition, have we received any feedback on DATCP's assertion that exceptions should be handled by DNR? Let me know what you think.

<<09-01782.pdf>> <<09-01782dn.pdf>>

Thanks!

Carrie Kahn

Legislative Assistant

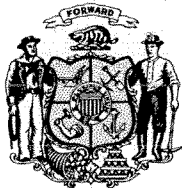
State Senator Bob Jauch

P.O. Box 7882

Madison, WI 53707-7882

608-266-3510

1-800-469-6562



State of Wisconsin
2009 - 2010 LEGISLATURE

4
LRB-0178/3

CTS&TKK:nwn&jld:md

d-note

In 4/27

2009 BILL

SA ✓

Regen.

- 1 AN ACT *to create* 100.275 and 118.07 (4) of the statutes; **relating to:** products
- 2 containing mercury and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture (mercury-added products), including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, switches and relays, and household items.

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and disposal and cleanup if the thermometer breaks. The bill prohibits the sale of manometers that contain mercury. Under the bill, manufacturers of manometers that contain mercury and that are the type in milking machines must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The bill also prohibits the sale of certain products containing mercury, including thermostats, other instruments and switches, and household items such as toys, clothing, and cosmetics.

The bill authorizes a manufacturer or user of certain mercury-added products to petition for an exemption from the bill's prohibitions. ^{DNR may} The secretary of agriculture, trade and consumer protection may, in consultation with the Department of Natural Resources, grant such an exemption only if the petitioner establishes certain facts, including that technically feasible nonmercury alternatives are not available at comparable cost.

This bill prohibits a public, private, or charter school from knowingly purchasing or using free-flowing elemental mercury for any purpose, or, with certain

the Department of Natural Resources (DNR)

BILL

exceptions, from knowingly purchasing or using a mercury-containing compound or an instrument or measuring device containing mercury. Beginning January 1, 2012, the bill prohibits a public, private, or charter school from knowingly storing free-flowing elemental mercury or, with certain exceptions, from storing a mercury-containing compound or an instrument or measuring device containing mercury.

A public, private, or charter school may purchase, use, or store a mercury-containing compound or an instrument or measuring device containing mercury if one of the following exceptions applies:

1. The purchase or use of the compound, instrument, or measuring device is required under federal law.

2. The only mercury-added component in the instrument or measuring device is a button cell battery.

3. No reasonably acceptable, mercury-free alternative exists, in which case, only a compound, instrument, or measuring device that contains the lowest mercury content available may be used.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. [✓]100.275 of the statutes is created to read:

2 **100.275 Products containing mercury.** (1) DEFINITIONS. In this section:

3 (a) "Mercury-added product" means a product to which mercury is
4 intentionally added during formulation or manufacture, or a product containing one
5 or more components to which mercury is intentionally added during formulation or
6 manufacture.

7 (b) "Mercury-added thermostat" means a product or device that uses a mercury
8 switch to sense and control room temperature through communication with heating,
9 ventilating, or air-conditioning equipment. "Mercury-added thermostat" includes
10 thermostats used to sense and control room temperature in residential, commercial,
11 industrial, and other buildings, but does not include a thermostat used to sense and
12 control temperature as part of a manufacturing process.

BILL

1 (c) "Mercury relay" means a mercury-added product or device that opens or
2 closes electrical contacts to effect the operation of other devices in the same or
3 another electrical circuit. "Mercury relay" includes mercury displacement relays,
4 mercury wetted reed relays, and mercury contact relays.

5 (d) "Mercury switch" means a mercury-added product or device that opens or
6 closes an electrical circuit or gas valve. "Mercury switch" includes mercury float
7 switches actuated by rising or falling liquid levels, mercury tilt switches actuated by
8 a change in the switch position, mercury pressure switches actuated by a change in
9 pressure, mercury temperature switches actuated by a change in temperature, and
10 mercury flame sensors. "Mercury switch" does not include a mercury-added
11 thermostat.

12 (2) RESTRICTIONS ON SALE AND USE OF MERCURY. (a) *Fever thermometers.* No
13 person may sell or supply a mercury fever thermometer to a consumer or patient,
14 unless the thermometer has been prescribed for the consumer or patient by a
15 practitioner, as defined in s. 450.01 (17). A mercury fever thermometer
16 manufacturer shall supply with each thermometer clear instructions on the careful
17 handling of the thermometer to avoid breakage, on proper cleanup if the
18 thermometer breaks, and on proper disposal. For purposes of this subsection,
19 "mercury fever thermometer" means a thermometer that contains mercury for the
20 purpose of measuring body temperature, but does not include a thermometer
21 containing mercury solely within a button cell battery.

22 (b) *Manometers.* No person may sell or distribute a mercury-containing
23 manometer of the type in milking machines on dairy farms. Manufacturers of such
24 mercury-containing manometers shall notify wholesalers and retailers that the sale

BILL

1 or distribution of such manometers is prohibited and shall instruct them on the
2 proper disposal of remaining inventory.

3 (c) *Mercury-added thermostats.* No person may sell or distribute for
4 promotional purposes a mercury-added thermostat.

5 (d) *Instruments and measuring devices.* 1. No person may sell or distribute any
6 of the following items, if the item contains mercury:

7 a. A barometer.

8 b. An esophageal dilator, bougie tube, or gastrointestinal tube.

9 c. A flowmeter.

10 d. A hydrometer.

11 e. A hygrometer or psychrometer.

12 f. A manometer other than a manometer prohibited from sale under par. (b).

13 g. A pyrometer.

14 h. A sphygmomanometer.

15 i. A thermometer other than a thermometer prohibited from sale under par. (a).

16 2. Subdivision 1. does not apply to the sale of a mercury-added product listed
17 in subd. 1. a. to i. if use of the product is required under federal law or if the only
18 mercury-added component in the product is a button cell battery.

19 (e) *Mercury switches and relays.* 1. No person may sell or distribute,
20 individually or as a product component, a mercury switch or mercury relay. This
21 subdivision does not apply to a switch or relay that is used to replace a switch or relay
22 that is a component in a larger product in use prior to the effective date of this
23 subdivision [LRB inserts date], if one of the following applies:

24 a. The larger product is used in manufacturing.

BILL

b. The switch or relay is integrated with, and not physically separate from, other components of the larger product.

2. Subdivision 1. does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is a federal requirement.

(f) *Household items*. No person may sell or distribute any of the following items

if the item contains mercury:

1. A toy or game.

2. Jewelry.

3. Clothing or shoes.

4. An over-the-counter pharmaceutical product for human use.

5. A cosmetic, toiletry, or fragrance product.

(3) EXEMPTIONS. (a) The prohibitions under this section do not apply to the sale of a mercury-added product for which the department of natural resources grants an exemption under this subsection.

(b) A manufacturer or user of a product may apply for an exemption from this section by filing a written petition with the secretary. The secretary may grant an exemption with or without conditions if, after consulting with the department of

natural resources, the secretary finds that the mercury-added product is reasonable and appropriate for a specific use. The secretary shall find that a product is

reasonable and appropriate for a specific use only if a manufacturer or user establishes all of the following:

1. A system exists for the proper collection, transportation, and processing of the product at the end of its life.

2. One of the following applies:

unless the only mercury-added component in the item is a button cell battery

department of natural resources

use twice

department of natural resources

BILL

SECTION 1

1 a. Use of the product provides a net benefit to the environment, public health,
2 or public safety when compared to available nonmercury alternatives.

3 b. Technically feasible nonmercury alternatives are not available at
4 comparable cost.

5 (c) Prior to approving an exemption, the *department of natural resources* ~~secretary~~
6 neighboring states to promote consistency in the regulation of mercury-added
7 products. The ~~secretary~~ may request a person who is granted an exemption to
8 maintain records and provide reasonable reports to the department that
9 characterize mercury use in the products for which the exemption was granted.

10 Exemptions may not exceed 5 years and may be renewed upon written application

11 if the ~~secretary~~ finds that the mercury-added product continues to meet the criteria
12 specified in par. (b) and the manufacturer or other persons comply with the

13 conditions of its original approval. The *department of agriculture, trade and*
14 *consumer protection, after consulting with the department of natural resources,*

15 shall promulgate rules for processing an exemption application that provide for
16 public participation, taking into account the role of the interstate clearinghouse
17 under sub. (4).

18 (4) INTERSTATE CLEARINGHOUSE. The department may participate in the
19 establishment and implementation of a regional, multistate clearinghouse to assist
20 in carrying out the requirements of this section.

21 **SECTION 2.** [✓] 118.07 (4) of the statutes is created to read:

22 118.07 (4) No school board, private school, or charter school may knowingly do
23 any of the following:

24 (a) Purchase or use free-flowing elemental mercury for any purpose.

BILL

(b) Purchase or use a mercury-containing compound or an instrument or measuring device that contains mercury unless one of the following exceptions applies:

1. No reasonably acceptable, mercury-free alternative exists, in which case the school board, private school, or charter school shall use a compound, instrument, or measuring device containing the lowest mercury content available.

2. The purchase or use of the compound, instrument, or measuring device is required under federal law.

3. The only mercury-added component in the instrument or measuring device is a button cell battery.

(c) Beginning January 1, 2012, store free-flowing elemental mercury or, unless one of the exceptions under par. (b) applies, store a mercury-containing compound or an instrument or measuring device that contains mercury.

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 12th month beginning after publication.

(END)

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0178/3dn
TKK:nwn&jld:md

Date

Sen. Jauch:

In an April 22, 2009, e-mail message from Randy Case (of the DNR) to legislative drafter Chris Sundberg, Suzanne Bangert (also of the DNR) responds to my drafter's note inquiry regarding what a school must do with mercury and mercury-containing products removed from the school. Ms. Bangert notes that the following language could be added to proposed s. 118.07 (4): "All eliminated mercury products shall be recycled in accordance with applicable state rules."

Ms. Bangert also indicates in that e-mail message that waste management services utilized by school districts to dispose of fluorescent lighting and other wastes know how to recycle mercury, that recycling mercury is common and not expensive, and most school districts have already collected and disposed of their mercury products (under the existing law applicable to the disposal of mercury).

If it is the case that schools are already required to comply with mercury disposal rules, then there is no need to add the language proposed by Ms. Bangert to s. 118.07 (4). However, if it was Ms. Bangert's intent that school districts *only* recycle mercury (as opposed to either recycling mercury or disposing of mercury as a hazardous waste), then adding the language proposed by Ms. Bangert would be necessary.

Please let me know if I misunderstood Ms. Bangert's response to my inquiry or if you have any questions or wish to make any changes.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Case, Charles R - DNR [Charles.Case@wisconsin.gov]
Sent: Friday, April 24, 2009 11:24 AM
To: Bangert, Suzanne A - DNR; Heinen, Paul H - DNR; McDermid, Mark - DNR
Cc: Barry, Sarah; Amber Meyer Smith; Kuczenski, Tracy
Subject: Mercury Product Bill (LRB 0178/3) - School Edit

Sue, DNR had suggested in your e-mail of January 22, 2009 to Carrie Kahn of Sen. Jauch's office that s. 118.07(4)(c) pertaining to elimination of mercury products from schools be clarified by adding the sentence, "All eliminated mercury products shall be recycled in accordance with applicable state rules." We had added this sentence because the drafter of this section of the bill had asked, in a drafters note, how schools should dispose of old mercury products.

I spoke with the drafter this morning and with her understanding that there are state rules for the management of mercury products (either universal or hazardous waste rules and guidelines), and that the companies handling these products for schools would know of such rules and guidelines, that we do not need to repeat a reference to existing rules and guidelines in this statute. I concurred and advised that we had added the sentence only because we thought the drafter was asking for such clarification. We agreed in today's call that the above sentence would NOT be added to the bill.

If you disagree, please contact Tracy Kuczenski by e-mail above or 266-9867. If Tracy does not hear from you she will presume that our earlier sentence does not need to be added to the mercury product bill.

4/27/2009

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0178/4dn

TKK:nwn:rs

April 27, 2009

Sen. Jauch:

In an April 22, 2009, e-mail message from Randy Case (of the DNR) to legislative drafter Chris Sundberg, Suzanne Bangert (also of the DNR) responds to my drafter's note inquiry regarding what a school must do with mercury and mercury-containing products removed from the school. Ms. Bangert notes that the following language could be added to proposed s. 118.07 (4): "All eliminated mercury products shall be recycled in accordance with applicable state rules."

Ms. Bangert also indicates in that e-mail message that waste management services utilized by school districts to dispose of fluorescent lighting and other wastes know how to recycle mercury, that recycling mercury is common and not expensive, and most school districts have already collected and disposed of their mercury products (under the existing law applicable to the disposal of mercury).

If it is the case that schools are already required to comply with mercury disposal rules, then there is no need to add the language proposed by Ms. Bangert to s. 118.07 (4). However, if it was Ms. Bangert's intent that school districts *only* recycle mercury (as opposed to either recycling mercury or disposing of mercury as a hazardous waste), then adding the language proposed by Ms. Bangert would be necessary.

Please let me know if I misunderstood Ms. Bangert's response to my inquiry or if you have any questions or wish to make any changes.

Tracy K. Kuczenski
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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0178/4
CTS&TKK:nwn&jld:rs

2009 SENATE BILL 200

"Corrected
Copy"
Requested
05-15-2009

May 14, 2009 - Introduced by Senators JAUCH, COGGS, COWLES, LASSA, LEHMAN, MILLER, RISSER, ROBSON, SULLIVAN and TAYLOR, cosponsored by Representatives DANOU, BLACK, BENEDICT, BERCEAU, BERNARD SCHABER, DEXTER, HEBB, HILGENBERG, HINTZ, HIXSON, MILROY, A. OTT, PARISI, PASCH, POCAN, POPE-ROBERTS, RICHARDS, ROYS, SINICKI, SMITH, SPANBAUER and STEINBRINK. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

- 1 AN ACT *to create* 100.275 and 18.07 (4) of the statutes; **relating to:** products
2 containing mercury and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture (mercury-added products), including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, switches and relays, and household items.

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and disposal and cleanup if the thermometer breaks. The bill prohibits the sale of manometers that contain mercury. Under the bill, manufacturers of manometers that contain mercury and that are the type in milking machines must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The bill also prohibits the sale of certain products containing mercury, including thermostats, other instruments and switches, and household items such as toys, clothing, and cosmetics.

The bill authorizes a manufacturer or user of certain mercury-added products to petition the Department of Natural Resources (DNR) for an exemption from the bill's prohibitions. DNR may grant such an exemption only if the petitioner establishes certain facts, including that technically feasible nonmercury alternatives are not available at comparable cost.

This bill prohibits a public, private, or charter school from knowingly purchasing or using free-flowing elemental mercury for any purpose, or, with certain

SENATE

INTRODUCTION AND REFERRAL OF PROPOSALS

(May 15, 2009)

SENATE BILL 200 (LRB -0178)

Relating to: products containing mercury and granting rule-making authority.

By Senators Jauch, Coggs, Cowles, Lassa, Lehman, Miller, Risser, Robson, Sullivan, Taylor and Wirch; cosponsored by Representatives Danou, Black, Benedict, Berceau, Bernard Schaber, Dexter, Hebl, Hilgenberg, Hintz, Hixson, Milroy, A. Ott, Parisi, Pasch, Pocan, Pope-Roberts, Richards, Roys, Sinicki, Smith, Spanbauer and Steinbrink.

Referred to Committee on **SMALL BUSINESS, EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND CONSUMER PROTECTION.**

Added

from
Jeff (scc office)
05-15-2009

"corrected copy"
requested